

TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

Carmelo B. Sammataro

E-mail: SSammataro@TurnerPadget.com

Writer's Direct Dial: (803) 227-4253

Writer's Direct Fax: (803) 400-1532

July 21, 2014

VIA HAND DELIVERY AND ELECTRONIC MAIL

Michael B. Spicer
Chief Procurement Officer for Information Technology
1201 Main Street, Suite 601
Columbia, SC 29201

Re: Solicitation Number 5400007220 (Issue Date March 5, 2014)
Case Number 2014-208

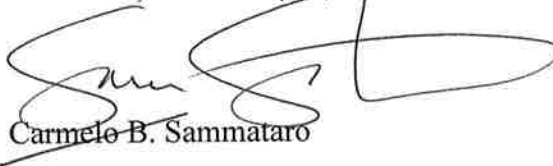
Dear Mr. Spicer:

Enclosed please find the original and one copy of the Request For Procurement Panel Review by RenewData Corp. regarding the above-referenced matter. Also enclosed is our check for the filing fee. Please file the original document and return a clocked copy to me via our office courier. Thank you for your assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.



Carmelo B. Sammataro

CBS/tj
Enclosures

JUL 21 14 MO 4:26PM

WMO OFFICE

BUSINESS • LITIGATION • SOLUTIONS

Bank of America Plaza • 17th Floor • 1901 Main Street (29201) • PO Box 1473 • Columbia, SC 29202
Phone (803) 254-2200 • Fax (803) 799-3957 • turnerpadget.com

STATE OF SOUTH CAROLINA) BEFORE THE CHIEF PROCUREMENT OFFICER
)
COUNTY OF RICHLAND) CASE No.: 2014-208

In Re: Cancellation of Aware to)
RenewData Corp.)

Cancellation of Award Prior to)
Performance)
Solicitation No. 54000072220)
Relatively Software and Services)

**REQUEST FOR PROCUREMENT PANEL
REVIEW BY RENEWDATA CORP.**

**TO: MICHAEL B. SPICER, CHIEF PROCUREMENT OFFICER FOR
INFORMATION TECHNOLOGY:**

RenewData Corp (“RenewData”), as a party adversely affected by the decision of the Chief Procurement Officer (“CPO”) for Information Technology posted July 14, 2014¹, hereby requests review by the South Carolina Procurement Panel (“the Panel”) of the written determination of the CPO. RenewData also requests a hearing before the Panel. RenewData believes the limited analysis set forth in the CPO’s Order is incorrect and that the elements set forth in S.C. Code Reg. 19-445.2085(C) have not been met. Further, the specifications contained within Solicitation Number 54000072220 fully satisfy the requirements of S.C. Code Reg. 19-445.2140(B) because said specifications and the bid process fully account for the initial acquisition cost as well as the cost of ownership.

In support of its request for review by the Panel, RenewData acknowledges the May 21, 2014 protest letter by Alloy Group addressing what it deems to be “objectionable pricing.” At the same time, however, the CPO has previously determined Alloy Group’s bid was untimely, that it was not an actual bidder, offeror, contractor, or subcontractor, and, as a result, the CPO lacked jurisdiction to adjudicate the protest raised by Alloy Group. *See* July 10, 2014 Decision by the CPO, Case No.: 2014-208 (attached for ready reference as Exhibit 2). To date, it does not appear that Alloy Group has sought review of the July 10 Order, and no other bidder, offeror, contractor, or subcontractor has lodged a protest in response to the Intent to Award posted May 16, 2014, which was set to become the Final Statement of Award on May 27, 2014.

¹ The Decision by the CPO indicates posting and mailing dates of June 11, 2014, which appears to be a scrivener’s error. RenewData received written notice of the CPO’s order via email on the afternoon of Friday, July 11, 2014, which is consistent with the Notice Regarding Award issued the same day. The referenced email, notice, and order are attached for ready reference as Exhibit A.

As the winning bidder, RenewData is a real party in interest, and the Procurement Review Panel has jurisdiction pursuant to S.C. Code Ann. § 11-35-4410. RenewData therefore requests a hearing before the Panel and urges the Panel to reverse the July 14, 2014 Decision of the CPO to cancel the award in connection with Solicitation No.: 5400007220.

TURNER, PADGET, GRAHAM & LANEY, P.A.

July 21, 2014

By:



Carmelo B. Sammataro
Post Office Box 1473
Columbia, SC 29202
Phone: (803) 254-2200
Fax: (803) 799-3957

ATTORNEYS FOR RENEWDATA CORP.

CERTIFICATE OF SERVICE

I hereby certify that this 21st day of July 2014 a copy of **REQUEST FOR PROCUREMENT PANEL REVIEW BY RENEWDATA CORP.** has been served, via hand delivery, addressed to the following:

Michael B. Spicer
Chief Procurement Officer for Information Technology
1201 Main Street, Suite 601
Columbia, SC 29201



EXHIBIT A

Jolly, Terri L.

From: Sammataro, Sam
Sent: Monday, July 21, 2014 2:35 PM
To: Jolly, Terri L.
Subject: FW: Cancellation of Award
Attachments: 2014-208A.pdf

From: Richard Slaby [<mailto:Richard.Slaby@renewdata.com>]
Sent: Friday, July 11, 2014 3:05 PM
To: Scott Collister; Sammataro, Sam; Jim Blayney; Tom Shambo
Subject: FW: Cancellation of Award

This just in from the State of SC CPO

From: Spicer, Mike [<mailto:mbspicer@mmo.sc.gov>]
Sent: Friday, July 11, 2014 3:00 PM
To: Richard Slaby; Conner, Ron; Sprang, Sandee
Cc: James White (jwhite@alloygroup.com)
Subject: Cancellation of Award

Attached is my determination with regards to a request by the Information Technology Management Office and the Attorney General's Office to cancel the award for Relativity Software and Services so the specifications can be revised and a new solicitation issued that reflects the total cost of ownership in compliance with the South Carolina Consolidated Procurement Code. This decision is also posted at <http://procurement.sc.gov/PS/legal/PS-legal-decisions-it.phtm>

Michael B. Spicer
Information Technology Management Officer
1201 Main Street, Suite 600
Columbia, SC 29201
(803) 896-5225
Fax: (803) 737-0102

Confidentiality Notice: This electronic communication contained in this e-mail from Richard.Slaby@renewdata.com (including any attachments) may contain privileged and/or confidential information. This communication is intended only for the use of indicated e-mail addressees. Please be advised that any disclosure, dissemination, distribution, copying, or other use of this communication or any attached document other than for the purpose intended by the sender is strictly prohibited. If you have received this communication in error, please notify the sender immediately by reply e-mail and promptly destroy all electronic and printed copies of this communication and any attached document. Thank you in advance for your cooperation.

STATE OF SOUTH CAROLINA
B&CB, DIV. OF PROCUREMENT SERVICES, ITMO
1201 MAIN STREET, SUITE 601
COLUMBIA SC 29201

Notice Regarding Award
Posting Date: July 14, 2014

Solicitation: 5400007220
Description: Relativity Software and Services
Agency: Attorney General's Office

THE INTENT TO AWARD IS CANCELLED. SPECIFICATIONS WILL BE REVISED AND RE-SOLICITED. CPO'S WRITTEN DETERMINATION CAN BE FOUND AT <http://procurement.sc.gov/PS/legal/PS-legal-decisions-it.phtm>.

Contract Number: 4400008350
Awarded To: RENEW DATA CORP
9500 ARBORETUM BLVD
AUSTIN TX 78759

Total Potential Value: \$ 539,020.00
Maximum Contract Period: May 27, 2014 through May 26, 2019

Item	Description	Unit Price	Total
00001	Monthly User Fee per 1 User	\$ 90.00	\$ 90.00
00002	Monthly Hosting Fee	\$ 21.39	\$ 21.39
00003	Analytics - Optional Services	\$ 200.00	\$ 200.00

Procurement Officer
RON CONNER

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In Re: Cancellation of Award to
Renew Data Corp.

**Cancellation of Award Prior to
Performance**
Solicitation No. 5400007220
Relativity Software and Services

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2014-208

POSTING DATE: June 11, 2014

MAILING DATE: June 11, 2014

This matter is before the Chief Procurement Officer for Information Technology (CPO) pursuant to a request from the Information Technology Management Office (ITMO) [Ex. 1] under the provisions of §11-35-1520(7) of the South Carolina Consolidated Procurement Code (Code), for a determination of appropriateness regarding the State's intention to cancel, prior to performance, the award to Renew Data Corp for Relativity Software and Services.

Basis For The Request

The ITMO issued Invitation For Bids 5400007220 for Relativity Software and Services on March 5, 2014. Bids were received on April 10, 2014. An Intent to Award a contract to Renew Data Corp was posted on May 16, 2014, [Exh. 1]. Mr. Ron Conner, Procurement Manager with ITMO and the Office of the Attorney General requested cancellation after award but prior to performance under Regulation 19-445.2085(C):

- (1) Inadequate or ambiguous specifications were cited in the invitation;
- (2) Specifications have been revised;
- (4) The invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
- (8) For other reasons, cancellation is clearly in the best interest of the State

This solicitation is to establish a term contract for a hosted e-discovery solution using Relativity software for one year with four one-year options to renew. [Solicitation page 34] Amendment One added a requirement for Relativity's analytics functions:

4. Do you anticipate using Relativity's analytics functions on your matters?
Answer: Yes

Amendment Two added the analytics functions as a line item in the bid schedule.

ANALYTICS CAPABILITIES

Within the Relativity hosting environment, contractor must make Analytics functionality available on a per-case basis at the AGO's discretion. Analytics must include, but is not limited to:

- Assisted Review
- Concept Searching
- Similar Document Detection
- Clustering

- Keyword Expansion

Pricing for analytics shall be included as a third line item in addition to basic hosting and user fees, and must be structured as a per Gigabyte per Month fee.

Item	Quantity	Unit of Measure	Unit Price	Extended Price
3	1 GB	GB		
Product Catg.: 92003 - Application Service Provider ASP				
Item Description: OPTIONAL-Monthly Analytics Fee to include services listed in Section III - Analytics Capabilities.				

Line item 3 is optional. The AGO anticipates the desire to use Analytics on three cases in the next year. The cost for Analytic capability is in addition to Line item 2, the standard monthly hosting fee. Analytics would be used on a case by case basis.

However, the original formula for calculating the bid price, as published in the solicitation, was not modified to include the cost of the analytics function and the solicitation did not include an estimated quantity of storage required for the analytics function:

CALCULATING THE LOW BID

The low bid will be calculated by adding the total unit price for the monthly user fee multiplied by 60 to the total unit price for the monthly hosting fee multiplied by 60. (i.e (monthly user fee * 60) + (monthly hosting fee * 60)). [Solicitation page 22]

Budget and Control Board Regulation 19-445.2140(B) requires that the specifications take into account the cost of ownership and operation as well as the initial acquisition cost.

Determination

The original calculation of low bid did not take in consideration all factors of cost. The specifications will be revised to reflect the total cost of ownership as required by the Procurement Code. The award to Renew Data Corp. is cancelled under Regulation 19-445.2085(C) for the reasons state above.



Michael B. Spicer
Chief Procurement Officer for Information Technology

STATEMENT OF RIGHT TO ADMINISTRATIVE REVIEW

Written Determination Appeal Notice (Revised October 2010)

The South Carolina Procurement Code, in Section 11-35-4410, subsection (1)(b) states:

(1) Creation. There is hereby created the South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine de novo:

(b) requests for review of other written determinations, decisions, policies, and procedures arising from or concerning the procurement of supplies, services, information technology, or construction procured in accordance with the provisions of this code and the ensuing regulations; except that a matter which could have been brought before the chief procurement officers in a timely and appropriate manner pursuant to Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, must not be the subject of review under this paragraph. Requests for review pursuant to this paragraph must be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of the written determinations, decisions, policies, and procedures.

Copies of the Panel's decisions and additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Requests must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2012 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2010 S.C. Act No. 291, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an action before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).

Exhibit 1

STATE OF SOUTH CAROLINA
B&CB, DIV. OF PROCUREMENT SERVICES, ITMO
1201 MAIN STREET, SUITE 601
COLUMBIA SC 29201

Intent to Award

Posting Date: May 16, 2014

Solicitation: 5400007220

Description: Relativity Software and Services

Agency: Attorney General's Office

The State intends to award contract(s) noted below. Unless otherwise suspended or canceled, this document becomes the final Statement of Award effective **08:00:00, May 27, 2014**. Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.

Contractor should not perform work on or incur any costs associated with the contract prior to the effective date of the contract. Contractor should not perform any work prior to the receipt of a purchase order from the using governmental unit. The State assumes no liability for any expenses incurred prior to the effective date of the contract and issuance of a purchase order.

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. [Section 11-35- 4210]

PROTEST - CPO ADDRESS - ITMO: Any protest must be addressed to the Chief Procurement Officer, Information Technology Management Office, and submitted in writing

(a) by email to protest-itmo@itmo.sc.gov,

(b) by facsimile at 803-737-0102, or

(c) by post or delivery to 1201 Main Street, Suite 601, Columbia, SC 29201.

Contract Number: 4400008350

Awarded To: RENEW DATA CORP
9500 ARBORETUM BLVD
AUSTIN TX 78759

Total Potential Value: \$539,020.00

Maximum Contract Period: May 27, 2014 through December 26, 2019

Item	Description	Unit Price
00001	Monthly User Fee per 1 User	\$ 90.00
00002	Monthly Hosting Fee	\$ 21.39
00003	Analytics - Optional Services	\$ 200.00

Procurement Officer
RON CONNER